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17 Morgan Stanley & Co., Inc.

18 UNITED STATES DISTRICT COURT  
19 NORTHERN DISTRICT OF CALIFORNIA

20  
21 GARY E. AFFONSO,

Case No. C 10-05054 PJH

22 Plaintiff,

23 v.  
24 **STIPULATION AND [PROPOSED]  
ORDER CONTINUING BRIEFING AND  
HEARING SCHEDULE FOR  
DISPOSITIVE MOTIONS**

25 METROPOLITAN LIFE INSURANCE  
26 COMPANY; MORGAN STANLEY SMITH  
27 BARNEY LLC (APPEARING AS MORGAN  
STANLEY & CO., INC.); and MORGAN  
STANLEY & CO., INCORPORATED, BASIC  
AND SUPPLEMENTAL LIFE INSURANCE  
PLAN: 501,

28 Defendants.

1 IT IS HEREBY STIPULATED BY AND BETWEEN THE PARTIES:

2 Due to plaintiff Gary E. Affonso's ("plaintiff") pending motion for reconsideration  
3 regarding abuse of discretion review (ECF No. 96), plaintiff and defendants Metropolitan Life  
4 Insurance Company ("MetLife"), Morgan Stanley Benefits Plan ("Plan"), and Morgan Stanley  
5 & Co., Inc. ("Morgan Stanley") (collectively "defendants"), hereby respectfully request a  
6 continuance of the briefing and hearing schedule for dispositive motions.

7 The parties jointly propose the following schedule:

8

- 9 The parties' cross-motions shall be heard on January 11, 2012 at 9:00 a.m., or as  
10 soon thereafter as is convenient to the Court's calendar. The parties understand that  
11 this hearing date may need to be changed because the proposed briefing schedule  
12 below may not allow for the related briefing to be completed in sufficient time prior  
13 to the new hearing date. In that instance, the parties will cooperate in selecting a  
14 mutually agreeable hearing date.
- 15 The briefing schedule shall be modified, under the alternative schedules:

16 If plaintiff's motion for reconsideration is denied and the standard  
17 of review remains abuse of discretion per the July 6, 2011 Order:

18

- 19 Defendants shall have 21 days from the date of the Court's order denying the  
20 motion for reconsideration to file their joint cross-motion and opposition to  
21 plaintiff's motion for summary judgment;
- 22 Plaintiff shall then have 21 days to file his opposition to defendants' cross-  
23 motion and his reply in support of his motion for summary judgment;
- 24 Defendants shall then have 14 days to file their joint reply brief.

25 If plaintiff's motion for reconsideration is granted, and the standard  
26 of review is changed from abuse of discretion to *de novo*:

27

- 28 Plaintiff shall have 21 days from the date of the Court's order granting the  
motion for reconsideration to withdraw his currently pending motion for  
summary judgment (ECF No. 91), and file a new/substituted motion for  
summary judgment;

1           • Defendants shall then have 21 days to file their joint cross-motion and  
2           opposition to plaintiff's motion for summary judgment;  
3           • Plaintiff shall then have 21 days to file his opposition to defendants' cross-  
4           motion and reply in support of his motion for summary judgment;  
5           • Defendants shall then have 14 days to file their joint reply brief.

6           SO STIPULATED AND RESPECTFULLY REQUESTED:

7           DATED: September 26, 2011    GUY KORNBLUM & ASSOCIATES

8  
9           By: /s/ Walter G. Crump (as authorized on 9/26/2011)  
10           Walter G. Crump  
11           Attorneys for Plaintiff  
12           Gary E. Affonso

13           DATED: September 26, 2011    SEDGWICK LLP

14           By: /s/ Rebecca A. Hull  
15           Rebecca A. Hull  
16           Erin A. Cornell  
17           Attorneys for Defendants  
18           Metropolitan Life Insurance Company; Morgan Stanley  
19           Benefits Plan

20           DATED: September 26, 2011    LAW OFFICES OF STEVEN A. ELLENBERG

21  
22           By: /s/ Mark Boennighausen (as authorized on 9/25/2011)  
23           Mark Boennighausen  
24           Attorneys for Defendant  
25           Morgan Stanley & Co., Inc.

26           **ORDER**

27           It is so ordered. The briefing schedule set forth in the parties' stipulation is adopted, and  
28           the hearing on the cross-motions for judgment shall be held on January 11, 2012 at 9:00 a.m.

29           DATED: 9/27/11

